

**OFFICE OF THE ELECTION ADMINISTRATOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

IN RE: JOHN HULL,)	
)	Protest Decision 2000 EAD 30
)	Issued: October 2, 2000
Protestor.)	OEA Case No. PR081102CA
)	
)	
_____)	

John Hull, a member of Local 938, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election (“*Rules*”) against Purolator Courier, Ltd. (“Purolator”). Hull alleges that he and others were attempting to gather accreditation petition signatures at an employee parking lot at Purolator in Etobicoke, Ontario, and that they were prevented from doing so by Purolator, in violation of Article VII, Section 11(e) of the *Rules*.

Election Administrator representative Gwen Randall investigated the protest.

Findings of Fact

Hull, John Gorman, Cec McEwen, and Joe Jephson (collectively, the “campaigners”) are candidates for delegate or alternate delegate in Local 938 and/or members of Local 938. On August 10, 2000, the campaigners travelled to the Purolator sorting hub at 62 Vulcan Street in Etobicoke, Ontario, to solicit accreditation petition signatures on behalf of the Tom Leedham slate. Purolator is one of the largest Teamster employers in the metropolitan Toronto area. The campaigners arrived at the employee parking lot at 4:00 p.m. Purolator employees begin work at 4:30 p.m. and 5:00 p.m.

At approximately 4:30 p.m., four members of Purolator management and two security guards approached the campaigners. The campaigners explained that they were there to collect accreditation signatures on behalf of the Leedham slate. Despite this, Purolator management escorted them off the premises. They continued their activities outside the plant gate. However, the gateside location is on a busy street, making solicitation difficult and possibly unsafe, since cars do not ordinarily stop at the gate.

In defense, Purolator notes that Local 938 conducted a strike vote among Purolator employees on or about June 30, 2000, that negotiations for a new collective bargaining agreement are continuing, and asserts that the campaigners caused its employees to become unruly by discussing such matters. The campaigners deny this, and state that they limited their conduct and discussions to the solicitation of accreditation signatures. Notwithstanding these assertions, Purolator’s counsel stated that the company would not allow campaigning on its parking lot under any circumstances, even if it were

offered assurance by the campaigners that their activities would not interfere with normal business activities

Analysis and Conclusion

Article VII, Section 11(e) of the *Rules* states that “candidate[s] for delegate or alternate delegate and any member of the candidate’s Local Union may distribute literature and/or otherwise solicit support in connection with such candidacy in any parking lot used by that Local Union’s members to park their vehicles in connection with their employment.” Section 11(e) further provides that “candidate[s] for International office and any Union member within the regional area(s) in which said candidate is seeking office may distribute literature and/or otherwise solicit support in connection with such candidacy in any parking lot used by [IBT] members to park their vehicles in connection with their employment in said regional area(s).” IBT members have the reciprocal right under the Article VII, Section 11(e) of the *Rules* to be so solicited and to receive literature offered for distribution.

These rights are available only in connection with campaigning during the 2000-2001 International Union delegate and Officer election conducted pursuant to the Consent Order¹. Such campaigning must occur “only during times when the parking lot is normally open to employees” and “do not extend to campaigning which would materially interfere with the normal business activities of the employer.” The rights guaranteed by Article VII, Section 11(e) “are not available to an employee on working time, [and] may not be exercised among employees who are on working time...” Additionally, the employer “may require reasonable identification to assure that a person seeking access to an employee parking lot pursuant to th[e] rule is a candidate or other [IBT] member entitled to such access.” Article VII, Section 11(e) also provides that nothing in its provisions “shall entitle any candidate or other [IBT] member to access to any other part of premises owned, leased, operated or used by an employer or to access to a parking lot for purposes or under circumstances other than as set forth herein.”²

These limited access rights are “presumptively available, notwithstanding any employer rule or policy to the contrary, based upon the Election Administrator’s finding that an absence of such rights would subvert the Consent Order’s objectives of ensuring free, honest, fair, and informed elections and opening the Union and its membership to democratic processes.” An employer, however, may rebut this presumption “by

¹ The “Consent Order” as that term is used in the *Rules* means “the March 14, 1989 agreement approved by the [United States District] Court [for the Southern District of New York, the Honorable David N. Edelstein presiding, and] entered into between and among the United States Government, the International Union and others in the case of *United States of America v. International Brotherhood of Teamsters, et al.*, 88 Civ. 4486 (DNE)(S.D.N.Y.), as amended, and all subsequent opinions, rulings and orders interpreting it.” *Rules, Definition 8.*

² Separately, Article VII, Section 11(f) of the *Rules* provides that “an employer’s discrimination in permitting access to its property shall constitute an improper contribution to the candidate(s) who benefit from such discrimination.”

October 2, 2000

demonstrating to the Election Administrator that access to Union members in an employee parking lot is neither necessary nor appropriate to meaningful exercise of democratic rights in the course of the 2000-2001 election...[, and] may seek relief from the Election Administrator at any time.”

The limited-access rule is a necessary infringement upon employer property rights, and is limited so that such rights are infringed upon only to the extent necessary to implement the Consent Order goal of providing for “free, fair and democratic election[s].” *United States v. IBT*, 896 F. Supp. 1349, 1367 (S.D.N.Y. 1995), *aff’d*, 86 F.3d 271 (2d Cir. 1996). There, Judge Edelstein approved the limited-access rule, finding it “crucial to the achievement” of such an election process. *Id.* at 1349.

Nonetheless, Purolator argues that the access provisions of the *Rules* should not be applied in Canada. However, as Judge Edelstein held in *United States v. IBT*, 162 LRRM 2623 (October 14, 1999), the election rules that have emanated from the Consent Order have been applied outside the territory of the United States if the activity regulated has a “substantial, direct, and foreseeable effect within the state, but only in respect to such activity.” *Id.* at 2627, quoting *United States v. IBT*, 945 F.Supp. 609, 620 (S.D.N.Y. 1996). The centrality of the access provisions of the *Rules* to the Consent Order’s goal of “free, fair and democratic election[s]” in our view fully supports the application of the access provisions of the *Rules* in Canada, where a significant portion of the IBT’s membership resides and works. Denial of limited access to employee parking lots in Canada will deny candidates meaningful access to employees, and impair the ability of the IBT to conduct a fair and open election for its convention delegates and International officers.

We find that Purolator violated these provisions of the *Rules* here. Purolator’s denial of parking lot access is undisputed, and, as expressed by Purolator, is unconditional.³ The access denied here is precisely the kind of campaign activity permitted by the *Rules*.

Accordingly, the protest is GRANTED.

Remedy

When the *Rules* have been violated, the Election Administrator “may take whatever remedial action is appropriate.” Article XIII, Section 4. In fashioning the appropriate remedy, the Election Administrator considers the nature and seriousness of the violation, as well as its potential for interfering with the election process. Based on the foregoing, the Election Administrator orders Purolator to cease and desist from any denial of access to IBT members to its employee parking lots in violation of Article VII, Section 11(e) of the *Rules*.

³ Nothing herein precludes Purolator from seeking relief from the Election Administrator under Article VII, Section 11(e).

Hull, 2000 EAD 30
October 2, 2000

An order of the Election Administrator, unless otherwise stayed, takes immediate effect against a party found to be in violation of the *Rules*. *Lopez*, 96 EAM 73.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within two (2) working days of receipt of this decision. The parties are reminded that, absent extraordinary circumstances, no party may rely in any such appeal upon evidence that was not presented to the Office of the Election Administrator. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

Kenneth Conboy
Election Appeals Master
Latham & Watkins
Suite 1000
885 Third Avenue
New York, New York 10022
Fax: 212-751-4864

Copies of the request for hearing must be served upon all other parties, as well as upon the Election Administrator for the International Brotherhood of Teamsters, c/o International Brotherhood of Teamsters, 25 Louisiana Ave., NW, Washington, DC 20001, all within the time period prescribed above. A copy of the protest must accompany the request for hearing.

William A. Wertheimer, Jr.

William A. Wertheimer, Jr.
Election Administrator

cc: Kenneth Conboy
Gwen Randall
2000EAD18

Hull, 2000 EAD 30
October 2, 2000

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